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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/549,848	04/14/2000	Michael Lassner	17133/02/US	9155

7590

09/17/2002

David Marsh  
Arnold & Porter  
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Washington, DC 20004

EXAMINER

COLLINS, CYNTHIA E

ART UNIT	PAPER NUMBER
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1638

DATE MAILED: 09/17/2002

26

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/549,848

Applicant(s)

LASSNER ET AL.

Examiner

Cynthia Collins

Art Unit

1638

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 August 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. **ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).**

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☒ Newly proposed or amended claim(s) 19 and 24 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 1, 13, 18-28 and 42-43.

Claim(s) objected to: \_\_\_\_\_.

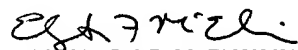
Claim(s) rejected: 29-33 and 44; claim 29, and claims 30-33 and 44 dependent thereon, would be rejected under 35 USC 112, 2d paragraph, as being indefinite.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 22 and 23.
10. ☒ Other: interview summary

Continuation of 3. Applicant's reply has overcome the following rejection(s): rejection of claims 36 and 39 under 35 U.S.C. 112, first paragraph, for written description; rejection of claims 19-33, 36, 39 and 42-44 under 35 U.S.C. 112, first paragraph, for scope of enablement; rejection of claim 19 under 35 U.S.C. 112, second paragraph; rejection of claims 19-20 under 35 U.S.C. 102(b).

Continuation of 5. does NOT place the application in condition for allowance because: claim 29 is indefinite in the recitation of "increasing the biosynthetic flux in a host cell toward tocopherol".

  
ELIZABETH F. McELWAIN  
PRIMARY EXAMINER  
GROUP 1800